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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,636	09/29/2003	Gary Vacon	160-007	1124

34845 7590 10/15/2007  
McGUINNESS & MANARAS LLP  
125 NAGOG PARK  
ACTON, MA 01720

EXAMINER
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NGUYEN, KHAI MINH

ART UNIT	PAPER NUMBER
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2617

MAIL DATE	DELIVERY MODE
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10/15/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/673,636

Applicant(s)

VACON ET AL.

Examiner

Khai M. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2,7,9,14,16 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7,14 and 21 is/are allowed.
- 6) ☒ Claim(s) 2,9, and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claim 2, 7, 9, 14, 16, and 21 have been considered but are moot in view of the new ground(s) of rejection.
2. The indicated allowability of claims 2, 9, and 16 are withdrawn because the newly discover reference(s) teaching all the claimed limitations.
3. Clams 7, 14, and 21: All these dots need to be change to "J".

Example: "a." should be "a)"

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 9, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jaszewski et al. (U.S.Pat-5933420) in view of Barber et al. (U.S.Pub-20040054774).

Regarding claim 2, Jaszewski teaches a first access point operable to provide wireless network access to client devices coupled to a wireless network (fig.1-4, access point 1, abstract), the first access point comprising:

a receiver operable to detect a signal from a second access point (fig.1-2, col.3, line 59 to col.4, line 25), distinguish that signal from other signals (fig.1-2, col.6, lines

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30-45), and measure strength of the signal (fig.1-4, col.6, lines 30-45, col.6, line 63 to col.7, line 8, claim 1); and

an indicator operable to provide an external indication of the strength directly from the first access point to a human being (fig.3-4, col.10, line 24 to col.11, line 14), the indication being perceivable by the human being (fig.3-4, col.10, line 24 to col.11, line 14) and also being indicative of the signal strength of the second access point (fig.3-4, col.10, line 24 to col.11, line 14);

Jaszewski fails to specifically disclose whereby proximity of the second access point relative to the first access point can be estimated by the human directly from reference to the first access point without knowing the precise geographic location of the second access point. However, Barber teaches whereby proximity of the second access point (AP2) relative to the first access point (AP1) can be estimated by the human directly from reference to the first access point without knowing the precise geographic location of the second access point (abstract, paragraph 0084). Therefore, it would have been obvious to one having ordinary skill in the art at the time invention was made to apply the teaching of Barber to Jaszewski to provide a system and method for monitoring radio spectrum traffic and interference thereof in a wireless networks.

Regarding claim 9, Jaszewski teaches a method executed by the first access point for facilitating deployment of the first access point (fig.1-4, access point 1-4, abstract) comprising the steps of:

receiving a plurality of signals (fig.1-2, col.2, lines 23-42, col.3, line 59 to col.4, line 25);

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distinguishing, in the plurality of signals, a signal from a second access point (fig.1-2, col.6, lines 30-45);

determining a signal strength of the signal from the second access point (fig.1-4, col.6, lines 30-45, col.6, line 63 to col.7, line 8, claim 1); and

providing on the access point an external indication of the signal strength that is perceptible by human being (fig.3-4, col.10, line 24 to col.11, line 14), the external indication provided directly from the first access point to the human being (fig.3-4, col.10, line 24 to col.11, line 14)

Jaszewski fails to specifically disclose whereby the first access point's proximity relative to the second access point can be estimated by the human directly from reference to the first access point without knowing the precise geographic location of the location of the second access point. However, Barber teaches whereby the first access point's (AP1) proximity relative to the second access point (AP2) can be estimated by the human directly from reference to the first access point without knowing the precise geographic location of the location of the second access point (abstract, paragraph 0084). Therefore, it would have been obvious to one having ordinary skill in the art at the time invention was made to apply the teaching of Barber to Jaszewski to provide a system and method for monitoring radio spectrum traffic and interference thereof in a wireless networks.

Regarding claim 16, Jaszewski teaches a program product for execution by a first wireless device comprising a computer readable medium having embodied therein

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a computer program for storing data (fig.1-4, abstract, col.3, lines 27-32), the computer program comprising:

logic operable to detect a signal from a second wireless device (fig.3-4, col.6, line 63 to col.7, line 8), distinguish that signal from other signals (fig.3-4, col.6, line 63 to col.7, line 8), and measure strength of the signal (fig.1-2, col.3, line 59 to col.4, line 25); and

logic for causing a human-perceptible external indication of the signal strength (fig.3-4, col.10, line 24 to col.11, line 14), the external indication provided directly from the first wireless device to the human being (fig.3-4, col.10, line 24 to col.11, line 14)

Jaszewski fails to specifically disclose whereby the relative proximity of the access point can be estimated by the human directly from reference to the first wireless device without knowing the precise geographic location of the access point . However, Barber teaches whereby the relative proximity of the access point can be estimated by the human directly from reference to the first wireless device without knowing the precise geographic location of the access point (abstract, paragraph 0084). Therefore, it would have been obvious to one having ordinary skill in the art at the time invention was made to apply the teaching of Barber to Jaszewski to provide a system and method for monitoring radio spectrum traffic and interference thereof in a wireless networks.

***Allowable Subject Matter***

5. Claims 7, 14, and 21 are allowed.

The following is a statement of reason for the indication of allowance: As the applicant stated in the remarks of the amendment filed on 8/20/2007.

Applicant's independent claims 7, 14 and 21: The present invention is directed to an access point operable to provide wireless network access to client devices coupled to a wireless network, and a controller capable of automatically choosing one of a plurality of radio frequencies on which to operate, said controller choosing said frequency after evaluating frequencies on which other access points operate, the independent claim identifies the patentably distinct feature "a. logic for picking a frequency; b. logic for transmitting on said frequency; c. logic for receiving on said frequency; d. logic for evaluating whether other access points are heard on said frequency; e. logic for reducing transmission power; f. logic for evaluating whether said other access points are still heard on said frequency; g. logic for storing the transmission power at which no other access points are heard; h. logic for picking a next frequency as the frequency and repeating steps b-g until all of the plurality of frequencies has been picked; i. logic for comparing said stored transmission powers; j. logic for choosing for operation the frequency associated with the highest stored transmission power". Applicant's independent claims 7, 14 and 21 comprise a particular combination of elements, which is neither taught nor-suggested by prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submission should be clearly labeled "Comments on Statement of Reasons for Allowance."

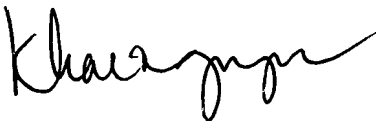
### ***Conclusion***

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khai M. Nguyen whose telephone number is 571.272.7923. The examiner can normally be reached on 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rafael Perez-Gutierrez can be reached on 571.272.7915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Khai Nguyen  
Au: 2617



Rafael Perez-Gutierrez  
Supervisory Patent Examiner  
Technology Center 2600  
Art Unit 2617

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